

Board of Contract Appeals
General Services Administration
Washington, D.C. 20405

September 23, 2002

GSBCA 15823-RELO

In the Matter of LARRY J. WAKEFIELD

Larry J. Wakefield, APO Area Pacific, Claimant.

Col. William E. Ryan III, Director of Public Works, Headquarters, United States Army Garrison, Department of the Army, Schofield Barracks, HI, appearing for Department of the Army.

GOODMAN, Board Judge.

Claimant, Larry J. Wakefield, is a civilian employee of the Department of the Army. He has requested that this Board review the agency's determination not to reimburse him for certain costs incurred incident to his permanent change of station (PCS) move.

Factual Background

Claimant was transferred from Korea to Hawaii. He purchased a home at the new duty station and submitted a claim for reimbursement of relocation costs incurred in the settlement of the new residence in September 2000. The agency denied reimbursement in the amount of \$2120 for an expense listed on the settlement documents as a "Mortgage Broker fee to Pacific Access Mortgage."

The settlement sheet indicated the following loan related charges as follows:

Principal Amount of New Loan	212,000.00
Items Payable in Connection with Loan	
Credit Report to ERS	23.80
Doc Prep Fee to American Savings Bank	104.00
Mortgage Broker Fee to Pacific Access Mortgage	2120.00
Processing Fee to American Savings Bank	250.00

Claimant states:

This expense was denied by [the agency] . . . because the JTR [Joint Travel Regulations] do[es] not allow a broker as a reimbursable expense. However, I did not hire a broker to find a real estate loan for me. So I questioned the American Savings Bank who is my mortgage provider. American Savings Bank . . . sent . . . an explanation that the charge was really a 1 percent loan origination fee charged to me but they have an arrangement with Pacific Access Company. . . . I submitted this memo [to the agency] but was again turned down. So I got a second memo . . . stating the same thing in hopefully more clear language. Still unconvinced [the agency] also denied on their original [basis] that a broker fee is not a legitimate expense.

The first memorandum from his lender to which claimant refers reads in relevant part:

The 1.0% fee paid by Mr. Wakefield to American Savings Bank is a standard fee for a first time home buyer. This is an origination fee and is reflected in the A.P.R. on the truth-in-lending disclosure.

American Savings Bank has a brokerage agreement with Pacific Access Mortgage and pays a Broker Fee to them for delivering loans. In this loan transaction the 1.0% origination fee paid by Mr. Wakefield to American Savings was then paid to Pacific Access by way of a broker fee.

The second memorandum further states:

When Mr. Wakefield was arranging for financing his home, he worked through a licensed mortgage broker who is approved to broker loans to American Savings Bank. He was charged a 1% fee which is a loan origination fee. Because this fee is paid to the broker to compensate them for the work they have done to process the file for submission to our underwriters, it is termed a "broker fee." Mr. Wakefield did not pay anymore [sic] than he would have paid if he had come directly to an American Savings Bank Loan Officer.

The "broker fee" is an origination fee and is reflected in the Annual Percentage Rate on the Truth-in-Lending disclosure.

The agency has responded as follows:

The original determination . . . has not changed based on the following:

- a. The Joint Travel Regulation[s] (JTR) . . . define[s] origination fee as a "fee paid by a borrower to compensate a lender for administrative-type expenses incurred in originating and processing a loan."
- b. The legal review of Mr. Wakefield's claim provided to our office: "I have considered the statement by American Savings Bank but the payment of a broker's fee as part of a loan origination fee is not permissible. The loan origination fee to be paid must entail payment to the lender for the administrative cost of preparing the loan. In this case, the lender paid the

mortgage broker a fee for bringing Mr. Wakefield's loan business to the lender."

The claimant's final response was as follows:

My original documentation [the two memoranda] are the lender's statements that I paid an origination fee. What the lender decides to do with the proceeds of that fee is his business.

I believe the main issue here is that I was charged a compulsory 1% origination fee that was required to obtain a loan. It was not a discretionary expense on my part.

Discussion

In this case, the agency has refused to reimburse claimant for \$2120 which the agency states is a mortgage broker fee. The claimant has characterized this expense as a loan origination fee.

The JTR read in relevant part:

4. Miscellaneous Expenses

a. Reimbursable Items.

The expenses listed below are reimbursable in connection with residence sale (if customarily paid by a seller of a residence at the old PDS) and/or purchase of a residence (if customarily paid by a buyer of a residence at the new PDS), to the extent they do not exceed specifically stated limitations, or in the absence of limitations, amounts customarily paid in the residence locality:

....

(2) loan origination fees and similar charges such as loan assumption fees and loan transfer fees; (A loan origination fee is a fee paid by a borrower to compensate a lender for administrative-type expenses incurred in originating and processing a loan. Reimbursement for a loan assumption fee, a loan transfer fee, or a similar charge also may be allowed, if it is assessed in lieu of a loan origination fee and reflects charges for services similar to those covered by a loan origination fee. An employee may be reimbursed for these fees in an amount not in excess of 1 percent of the loan amount without itemization of the lender's administrative charges. Reimbursement may exceed 1 percent only if an employee shows by clear and convincing evidence that: (a) the higher rate does not include prepaid interest, points, or a mortgage discount; and (b) the higher rate is customarily charged in the residence locality.) . . .

JTR 14002-A.4.

The JTR make no provision for reimbursement of mortgage broker fees.

Claimant asserts that the \$2120 for which the agency has refused reimbursement is actually a reimbursable loan origination fee. The settlement sheet, however, classifies the \$2120 in dispute as a "mortgage broker's fee to Pacific Access Mortgage." The lender, American Pacific Bank, explains that when claimant was arranging for financing his home, he worked through a licensed mortgage broker who is approved to broker loans to American Savings Bank. He was charged a 1% fee which the lender called a "loan origination fee." The lender explained that "because this fee is paid to the broker to compensate them for the work they have done to process the file for submission to our underwriters, it is termed a 'broker fee.' Mr. Wakefield did not pay anymore [sic] than he would have paid if he had come directly to an American Savings Bank Loan Officer."

The agency, in denying reimbursement, reviewed claimant's contention that he actually paid a loan origination fee, but properly concluded that the loan origination fee to be paid must entail payment to the lender for the administrative cost of preparing the loan.

In this case, the lender paid the mortgage broker a fee for bringing claimant's loan business to the lender.

The settlement sheet indicates that other costs were incurred as administrative costs to the lender for preparing the loan - a credit report fee of \$23.80, a document preparation fee directly to the lender of \$140, and a loan processing fee directly to the lender of \$250. The \$2120 in dispute therefore does not appear to compensate the lender for administrative-type expenses incurred in originating and processing a loan, as other expenses have been incurred for these types of expenses.

There is no basis in the record to determine that the amount of \$2120 represents costs associated with loan origination fees, as there are other expenses which have been charged which represent such costs. The burden is on claimant to establish his right to payment. Absent such evidence, this claim fails. Rule 401(c); see, e.g., Richard A. Poisel, GSBCA 15330-RELO, 00-1 BCA ¶ 31,284 (claimant failed to prove that the mortgage broker's fee was charged for otherwise reimbursable costs); see also Michael L. Peeler, Comp. Gen. Dec. B-252355 (July 20, 1993).

Decision

The claim is denied.

ALLAN H. GOODMAN
Board Judge